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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 63

K. W. LAUGHLIN,

Petitioner,

vs.

SCOTT M. LOFTIN AND JOHN W. MARTIN, AS TRUSTEES FOR THE FLORIDA EAST COAST RAILWAY COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

NICHOLS, GAITHER, GREEN, FRATES AND BECKHAM,
Counsel for Petitioner.

WILLIAM C. GAITHER,
Of Counsel.

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Petitioner prays that a writ of certiorari issue to review a judgment of the Supreme Court of Florida, entered in the above-entitled cause on December 22, 1952.

Jurisdiction

The Circuit Court of Dade County, Florida, entered final judgment for the respondents on January 8, 1952 (R. 15). On December 22, 1952, this judgment was affirmed by the Supreme Court of Florida, Justice Terrell and Chief Justice Sebring dissenting. 62 So. 2d 745. Petition for a rehearing was denied by the Supreme Court of Florida on February 9, 1953. 62 So. 2d 745. The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1257(3).

Question Presented

Is a locomotive, its boiler, tender, and all parts and appurtenances "in proper condition and safe to operate" within the meaning of the Federal Safety Appliance Act, 45 U. S. C. Sec. 23, when:

1. The waterglass on the boiler gives false readings because of a leak in one of its steam pipe connections.

2. The automatic water pump, although turned on, fails to pump water into the boiler.

Statutory Provisions Involved

45 U. S. C. Sec. 23 provides in pertinent part:

> "It shall be unlawful for any carrier to use or permit to be used on its line any locomotive unless said locomotive, its boiler, tender, and all parts and appurtenances thereof, are in proper condition and safe to operate in the service to which the same are put, that the same may be employed in the active service of such carrier without unnecessary peril to life or limb, . . . "

45 U. S. C. Sec. 53 provides in pertinent part:

> "In all actions hereafter brought against any such common carrier . . . the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: *Provided,* That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee."

Rule 37 of the Interstate Commerce Commission provides in pertinent part: "Every boiler shall be equipped with at least one water glass . . ."

Statement

Petitioner, a railroad engineer, was seriously injured when the boiler, of the steam locomotive he was operating in interstate commerce for respondent railroad, exploded near Lake Worth, Florida, on April 4, 1951 (R. 42, 71, 166). Petitioner sued respondents on August 14, 1951, alleging violations of the applicable federal statutes enacted for the protection of railroad employees (R. 1-5). Relevant facts and circumstances concerning the explosion are these:

Locomotive boilers are so constructed that an explosion will result if the water level falls too low while the crownsheet is being heated. Since the consequences of the boiler explosion are so disastrous, steam locomotives are equipped with numerous safety devices to guard against these terrible occurrences. Under normal operating conditions, the locomotive's automatic water pump will keep a steady stream of water flowing from the water tank to the boiler, thus making it impossible for the crownsheet to become overheated.

Human frailties and the complexities of modern machinery being what they are, it is imperative that steam locomotives have devices to determine whether the water pump is actually pumping water into the boiler and how much water is actually in the boiler at all times. The boiler's water glass, required by Rule 37 of Interstate Commerce Commission, performs both these functions. The height of the water in the water glass column shows how much water is in the boiler, and when the automatic water pump is working properly, the water level in the glass can be seen to rise as water enters the boiler (R. 287, 292, 387-388).

The explosion which injured Petitioner Laughlin occurred because there was insufficient water in the boiler to

adequately cover the crownsheet (R. 217, 221, 250, 326, 369, and Defendants' Exhibit A-3 consisting of a piece of scorched crownsheet). The water glass on this exploding boiler had a leaky steam pipe connection at the top of the glass (R. 107; Plaintiff's Exhibit 16 consisting of Engineer Laughlin's routine report made prior to the explosion which stated, "Top water glass connection in very bad condition"; and Plaintiff's Exhibit 1 consisting of the leaky pipe itself). Since the leak was at the top connection, this caused the water glass to give false readings in that the water level in the glass was higher than the water level in the boiler (R. 59, 73-74, 150, 214).

Why the water pump on this locomotive failed to work properly is unknown. The water tank was filled at West Palm Beach, Florida, shortly before the explosion (R. 90, 93, 96-97, 110, 177, 194). In addition, the water pump was turned on during the entire time the train was traveling from West Palm Beach to the point of the explosion (R. 92, 99, 112, 175, 179-181), and was still turned on when respondents' employees investigated the wreckage. All that is known is that the pump did not work properly since the explosion was caused by lack of water in the boiler.

After all the evidence had been presented at the trial, respondents moved for a directed verdict on the grounds that no federal law had been violated and that the sole proximate cause of the accident was petitioner's own gross negligence (R. 412). The motion was denied (R. 412). Petitioner then moved for a directed verdict as to the issue of liability on the ground that 45 U. S. C. Sec. 23 was violated as a matter of law (R. 412-413). This motion was also denied (R. 413). The trial judge then proceeded to charge the jury that it should find for respondents, if it found that

the evidence did not disclose a violation of 45 U. S. C. Sec. 23, *and* that the negligence of Petitioner Laughlin was the sole proximate cause of the accident (R. 434). Thereafter, the jury returned a verdict for the respondents (R. 438).

Petitioner appealed to the Supreme Court of Florida contending that as a matter of law the defective water glass and the defective water pump were violations of 45 U. S. C. Sec. 23. On December 22, 1952, the Supreme Court of Florida rendered a *per curiam* affirmance of the judgment of the trial court. 62 So. 2d 745. Justice Terrell, with whom the then Chief Justice Sebring concurred, dissented, stating, "We are confronted with a Federal act that has been repeatedly construed by the Federal Courts. I think their interpretation of the act, when read with the evidence, compels a reversal with directions to grant a new trial on the question of damages based on the injuries proven." 62 So. 2d at 747.

Reasons for Granting the Writ

1. The Supreme Court of Florida has decided an important question of Federal law in a way probably not in accord with the applicable decisions of this Court. *Urie* v. *Thompson,* 337 U. S. 163; *Lilly* v. *Grand Trunk R. Co.,* 317 U. S. 485; *Southern Ry. Co.* v. *Lunsford,* 297 U. S. 398.

2. The decision below is in conflict with the decision of the Court of Appeals of Kentucky in *Louisville & N. R. Co.* v. *Stephens,* 298 Ky. 328, 182 S. W. 2d 477.

3. The decision below, if permitted to stand, will establish an erroneous precedent for the Supreme Court of Florida and for all other courts which do not, or refuse to, understand that violations of the Federal Safety Appliance Acts "dispense, for the purposes of employees' suits, with the necessity of proving that violations of safety statutes constitute negligence; and making proof of such violations

is effective to show negligence as a matter of law." *Urie* v. *Thompson*, 337 U. S. 163, 189.

4. The decision below is wrong and deprives petitioner of rights granted him by a Federal statute.

Conclusion

For the foregoing reasons, it is respectfully submitted that:

1. This petition for a writ of certiorari should be granted.
2. The judgment of the Supreme Court of Florida should be reversed with directions to grant petitioner a new trial limited to the issue of damages only.

Respectfully submitted.

NICHOLS, GAITHER, GREEN, FRATES & BECKMAN,

Counsel for Petitioner.

WILLIAM C. GAITHER,
Of Counsel.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA.

BRIEF FOR THE RESPONDENTS IN OPPOSITION.

LOFTIN ANDERSON SCOTT MCCARTHY & PRESTON,
Ingraham Building,
Miami 6, Florida,
Counsel for Respondents.

RUSSELL L. FRINK,
ROBERT H. ANDERSON,
FRANCIS W. SAILS,
Of Counsel.

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OPINION BELOW.

The *per curiam* opinion of the Supreme Court of Florida (R. 454-458) is reported at 62 So. 2d 745.

JURISDICTION.

The judgment of the Supreme Court of Florida was entered December 22, 1952 (R. 454) and a petition for rehearing was denied on February 9, 1953 (R. 462). The petition for a writ of certiorari was filed on May 9, 1953. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257.

QUESTION PRESENTED.

Whether this Court will re-weigh the evidence and substitute its judgment for the jury's conclusion that the sole proximate cause of petitioner's injury was his own negligence in the operation of his locomotive?

STATUTES AND REGULATIONS INVOLVED.

Locomotive Inspection Law:

> Section 2 [as added by the Act of June 7, 1924, 43 Stat. 659]. That it shall be unlawful for any carrier to use or permit to be used on its line any locomotive unless said locomotive, its boiler, tender, and all parts and appurtenances thereof are in proper condition and safe to operate in the service to which the same are put, that the same may be employed in the active service of such carrier without unnecessary peril to life or limb, and unless said locomotive, its boiler, tender, and all parts and appurtenances thereof have been inspected from time to time in accordance with the provisions of this Act and are able to withstand such test or tests as may be prescribed in the rules and regulations hereinafter provided for.
>
> (45 U. S. C. A., Sec. 23.)

Employers' Liability Act:

> Section 1. *Liability of common carriers by railroad, in interstate or foreign commerce, for injuries to employees from negligence; definition of employees.* Every common carrier by railroad while engaging in commerce * * * shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce * * * for such injury * * * resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.
>
> * * *
>
> (45 U. S. C. A., Sec. 51.)

Interstate Commerce Commission Rules promulgated under the Locomotive Inspection Law:

WATER GLASS AND GAUGE COCKS.

> Rule 37. *Number and Location.*—Every boiler shall be equipped with at least one water glass and three gauge cocks. The lowest gauge cock and the lowest reading of the water glass shall be not less than 3 inches above the highest part of the crown sheet. Locomotives which are not now equipped with water glasses shall have them applied on or before July 1, 1912.

STATEMENT.

The facts upon which the jury reached its verdict for respondents may be summarized as follows:

Petitioner was injured on April 4, 1951, when respondents' locomotive 815, aboard which he was engineer, exploded near Lake Worth, Florida (R. 47, 71, 89-90, 94,

171, 186-187). The explosion was caused by low water in the locomotive's boiler, resulting in the exposure, overheating and subsequent collapse of the crownsheet (R. 216-217, 369).

The locomotive had been thoroughly checked by respondents the day before the explosion at New Smyrna Beach, Florida, and found to be free of defects (R. 254-262); it had been safely operated from New Smyrna Beach to Ft. Pierce, Florida (R. 265-268, 277-280); and it had again been examined and found to be in proper condition before it was delivered to petitioner for his use (R. 288-292, 299-302). Petitioner himself testified that the locomotive was in good condition when he assumed charge of it (R. 192-193) and the fireman's inspection confirmed this fact (R. 118-120).

After petitioner left Ft. Pierce with the locomotive, however, a leak developed in the steam pipe connection to the water glass (R. 107-173). Petitioner attempted to tighten the connection when the leak first appeared near White City but this failed to correct the defect (R. 108-109, 174-175). At West Palm Beach petitioner described the leak in his engineer's report made prior to the explosion: "Top water glass connection in very bad condition" (R. 67-68, Plaintiff's Exhibit 16, Defendants' Exhibit D which shows substantially how the leak appeared, R. 105, 324). He did not however do anything to have the steam leak corrected, although he was responsible for the safe operation of the locomotive and there was a mechanic on duty at West Palm Beach who could have made the repairs (R. 74-75, 288, 388).

Moreover, it was not necessary for petitioner to rely on the defective water glass. Locomotive 815 was equipped with three gauge cocks which are an infallible device for

determining the water level in a boiler (R. 72, 156-157, 212-213, 221, 251, 328). A locomotive can be safely operated on these gauge cocks alone (R. 72, 75, 214, 223). This is good railroad practice and is what anyone operating with a defective water glass would do (R. 74, 267-268, 276-277, 372). It gives a completely accurate reading of the boiler water level and a fireman can tell merely by the sound whether a gauge cock is emitting water or steam and regulate his feed water pump accordingly (R. 113-114, 125). Indeed, petitioner has operated locomotives in this manner himself (R. 201).

Petitioner is an experienced engineer and knew that a bad steam leak would render a water glass unreliable (R. 200-201). As petitioner's witness Wilkinson testified almost anybody with any experience would know this (R. 139). But petitioner nevertheless relied upon the water glass which he should have known to be defective, although he could have had it repaired or safely operated his locomotive on the gauge cocks. The result was the explosion of the locomotive with consequent injury to many including petitioner.

The steam leak in the top water glass connection was the only defect on locomotive 815. The entire waterworks system of the locomotive, including the feed water pump, was inspected and tested following the explosion under the supervision of the Interstate Commerce Commission (R. 311-315, 369-371). The feed water pump was thoroughly checked and found to be in proper operating condition. It was placed on locomotive 801 in the same condition as when removed from locomotive 815 and has been in actual service there ever since (R. 311, 370-371). The remainder of the waterworks system was also in proper operating condition (R. 311-315, 369-372). The only de-

fect was in the steam pipe connection to the water glass (R. 314, 371-372).

The trial court charged the jury, without objection by petitioner (R. 414, 9-14) as follows (R. 434):

> Of course, if you shall find from the evidence that there was no violation of the governing statute and that the negligence of the plaintiff was the sole, proximate cause of the injuries sustained by him as a result of the explosion out of which this case arose, it will be your duty to return a verdict for the defendants.

The jury considered the evidence, the trial court's charge and returned a verdict for the respondents (R. 9). After denial of petitioner's motion for new trial (R. 14), this verdict was affirmed by the Supreme Court of Florida (R. 454) and rehearing was denied (R. 462).

ARGUMENT.

1. The decision of the Supreme Court of Florida is in accord with the applicable decisions of this Court, does not deprive petitioner of rights granted him by a Federal statute, and is correct.

The trial court submitted to the jury the issue of whether petitioner's negligence was the sole proximate cause of his injuries (R. 434) and on the submission of this issue to which petitioner did not object (R. 414, 9-14), the jury returned a verdict for the respondents (R. 9). The trial court and the jury were, of course, clearly within the ambit of their authority: This Court has long been committed to the position that what is the proximate cause of an injury is a question for jury determination. *Milwaukee & St. P. Ry.* v. *Kellogg*, 94 U. S. 469, 474.

Moreover, there is ample evidence to support the jury's conclusion that petitioner's own negligence was the sole proximate cause of his injury. His failure to have the defective water glass repaired or to operate his locomotive on the gauge cocks was a manifest breach of his duty toward his fellow employees, respondents, the public and himself in the stewardship of locomotive 815. *Walker* v. *Lykes Bros. S. S. Co.*, (2 Cir.) 193 F. 2d 772. The evidentiary basis being apparent, the appellate court's function is exhausted for it is "immaterial that the court might draw a contrary inference or feel that another conclusion is more reasonable." *Lavender* v. *Kurn*, 327 U. S. 645, 653. "It is the jury, not the court, which is the fact-finding body. It weighs the contradictory evidence and inferences, judges the credibility of witnesses, receives expert instructions, and draws the ultimate conclusion as to the facts. The very essence of its function is to select from among conflicting inferences and conclusions that which it considers most reasonable. * * * That conclusion, whether it relates to negligence, causation or any other factual matter, cannot be ignored. Courts are not free to re-weigh the evidence and set aside the jury verdict merely because the jury could have drawn different inferences or conclusions or because judges feel that other results are more reasonable." *Tennant* v. *Peoria & P. U. Ry.*, 321 U. S. 29, 35.

2. There is no conflict here with the decision in *Louisville & N. R. Co.* v. *Stephens*, 298 Ky. 328, 182 S. W. 2d 447. Rather it supports the result here for it was also an affirmance of a jury verdict. Furthermore, the *Stephens* case involved the fireman's right to recover for injuries negligently inflicted at the hands of the engineer, a right which we have never questioned. It does not stand for the proposition, however, that an engineer may recover for injuries negligently inflicted at his own hands.

CONCLUSION.

The decision of the Supreme Court of Florida is in accord with the decisions of this Court, it does not deprive petitioner of rights granted him by a Federal statute and it is correct. There are no conflicts and the issues presented are not important in the administration of the Safety Appliance Acts or the Employers' Liability Act. The petition for a writ of certiorari should be denied.

Respectfully submitted,

LOFTIN ANDERSON SCOTT MCCARTHY & PRESTON,
Counsel for Respondents.

RUSSELL L. FRINK,
ROBERT H. ANDERSON,
FRANCIS W. SAMS,
Of Counsel.